MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2018/2019

UEQ 3612 – EQUITY & TRUSTS I

(All Sections / Groups)

25th October 2018
Reading Time: 9:00 am – 9:15 am
(15 Minutes)
Answering Time: 9:15 am – 12:15 pm
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of **Three** pages with **Four** Questions only.

3. **Attempt Either Question One A OR Question One B. Questions Two to Four are compulsory.** All questions carry equal marks and the distribution of the marks for each question is given.

4. Please write all your answers in the Answer Booklet provided.

ATTEMPT EITHER

QUESTION 1A

"Although we would agree with the view that a trust should not normally be imported into a commercial relationship, yet we would hold that in cases such as those involved in these appeals the court could and should consider the facts to determine whether a fiduciary relationship existed."

~ The Supreme Court in the case of *Geh Cheng Hooi & Ors v Equipment Dynamics Sdn Bhd and other appeals* [1991] 1 MLJ 293

Illustrate how a trust could be imported into a commercial relationship as discussed in the judgment above in Malaysia with relevant authorities.

(TOTAL: 25 Marks)

OR

QUESTION 1B

Explain the origin of the principles of equity enforced and recognised as law in Malaysia as we know it today.

(TOTAL: 25 Marks)

Continued...

ATTEMPT ALL QUESTIONS

QUESTION 2

Mr. John Tolkien was an established and successful author of novels. Upon his hundred and eleventh birthday, he executed a deed of trust conveying all of his estate to his eldest son, Christopher, "to manage and benefit from the wealth and gifts that words have bestowed my life as it has my dear children, equally to sweet Priscilla, brave Michael, brilliant Francis and steadfast Christopher."

A year later, Mr. Tolkien fell very ill. He was soon bedridden as a result. His nurse, Ms. Teccare, was by his side every day and night for eight months. One night, Mr. Tolkien's health deteriorated rapidly. He instructed Ms. Teccare to bring him the keys to his summer house. As he gasped for breath, he said that she had "been a ray of sunshine in these difficult days. I want you to have this shack to remember me by." Shortly after, he passed away in the company of his children and Ms. Teccare.

Mr. Tolkien's will read amongst others as follows, "I pass all that is left over of my estate to my eldest, Christopher, to do with it as he sees fit and necessary so as to benefit himself and his siblings in weathering the challenges and tides of their future."

The four Tolkien children unanimously decided to turn their father's summer house into a museum dedicated to their father's life and literary achievements.

Ms. Teccare contacted Christopher to remind him that Mr. Tolkien had gifted the summer house to her. He responded that that could not have been valid as all of his father's estate had been passed to him.

Advise all the relevant parties of their beneficial interests over the Tolkien estate.

(TOTAL: 25 Marks)

QUESTION 3

Analyse the circumstances in which a 'stranger' may be liable as a constructive trustee for intermeddling with trust funds.

(TOTAL: 25 Marks)

Continued...

QUESTION 4

Aileen died last year. She left behind her husband Ben, and her sister Sarah, to whom she was very close. Prior to her marriage to Ben, Aileen gave birth to a child, Brian, who was subsequently given up for adoption. She never told Ben about the birth of her child. Few months before her death, during a conversation with Sarah, Aileen told Sarah that she had always wanted to make financial provision for Brian. She told Sarah that Ben was not aware of the fact that she had given birth before her marriage, and therefore indicated that she proposed to bequeath a legal interest in her family house to Sarah on the understanding that Brian would enjoy the benefit thereof. Sarah's memory is not what is used to be and she cannot recall the exact date of the conversation. Aileen executed a will in which she bequeathed her family home to Sarah "to be used by her in the manner in which she had been advised". She died soon after making the will.

Advice Brian.

(TOTAL: 25 Marks)

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